

(2017) 02 AHC CK 0038
In the Allahabad High Court
Case No : Second Appeal No. 182 of 2017

Central Council Radhasoami Satsang	APPELLANT
Vs	
Dr. D.K. Hazra	RESPONDENT

Date of Decision : 22-02-2017

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100, Section 2(2)

Citation : (2017) 5 ADJ 528

Hon'ble Judges : Pradeep Kumar Singh Baghel, J.

Bench : Single Bench

Advocate : Devansh Rathore and Navin Sinha, Advocates, for the Appellants;
Ravi Kant, Rishabh Agarwal and Tarun Agrawal, Advocates, for the Respondent

Final Decision : Dismissed

Judgement

Pradeep Kumar Singh Baghel, J.—This second appeal is by the plaintiffs—Central Council Radhasoami Satsang and its members, against the judgment and order dated 09th November, 2016 passed by the learned Additional District Judge, Court No. 12, Agra (lower appellate Court) in Civil Appeal No. 96 of 2012, Central Council Radhasoami Satsang and others v. Dr. D.K. Hazara, and the order dated 24th February, 2012 passed by the learned Additional Civil Judge (Senior Division), Court No. 5, Agra (trial Court) in Original Suit No. 223 of 1989, Central Council Radhasoami Satsang v. Dr. Daya Kishore Hazara, allowing the application of the defendant-respondent for abatement of the suit and rejecting the application of the plaintiffs for impleadment of some of the members of the society as plaintiff in the suit.

2. The essential facts are that Radhasoami Satsang is a religious institution, which was founded in the year 1861. Later on, Central Council Radhasoami Satsang (or the Central Administrative Council) was created in the year 1902, which is functioning as a perpetual body. The Central Council Radhasoami Satsang, the plaintiff no. 1, instituted a suit, being Original Suit No. 223 of 1989, Central Council Radhasoami Satsang and others v. Dr. D.K. Hazara, in the Court

of the Civil Judge, Agra for a decree of eviction against the defendant from the premises of the plaintiff. A decree of permanent prohibitory injunction was also sought therein to restrain the defendant from effecting any change or causing any damage to the suit property occupied by him as an erstwhile licensee, besides the decree for damages. The plaintiff nos. 2 to 22, who were/are members of the plaintiff no. 1, also joined the suit as plaintiffs. Briefly the case of the plaintiffs was that the defendant-respondent is a licensee of Satsang Quarter No. SE-5, situated within the Soami Bagh Compound at Soami Bagh Town Area, Agra, the suit property. According to the plaintiffs, the cause of action arose when the defendant-respondent indulged in activities which were regarded and considered by the Council as undesirable.

3. During the pendency of the suit, several members of the Council, who were plaintiffs in the suit, expired and in their place fresh members were elected, however, admittedly they were not brought on record with due promptness.

4. The defendant-respondent moved an application on 17th August, 2010, being Paper No. 192-Ga, to the effect that since members of the Council stood reduced to less than 10, the Council itself ceased to exist and hence the suit be dismissed as infructuous or having abated. To the said application, an objection was filed by the plaintiffs wherein it was stated that it was not necessary that all the members of the plaintiff no. 1 should be added as plaintiffs in the suit because the plaintiff no. 1 and other 5 plaintiffs may continue the suit without adding the other members of the plaintiff no. 1. It was further stated therein that due to death of members the suit does not abate and newly elected members may be added at any point of time as plaintiffs.

5. The plaintiffs also moved an application, being Paper No. 200Ka, under Order 6, Rule 17 of the Code of Civil Procedure (CPC) in view of the objection raised by the defendant that there should be always 10 members of the Central Administrative Council as plaintiffs but only 5 members are there who are plaintiffs in the suit because other members have died and their names are deleted. It was stated therein that it was not advised to add newly elected members of the Central Administrative Council after the death of some of the members, who originally filed the suit. It was further stated that to avoid unnecessary objection, the newly elected members are sought to be added in sequence as plaintiff no. 23 onwards by seeking amendment in the plaint. The plaintiffs also filed an application, being Paper No. 207 Ga, to bring on record the minutes of the meetings in which the new members were elected in place of the deceased ones.

6. The trial Court vide its judgment and order dated 24th February, 2012 dismissed the appellants' application being Paper No. 200 Ka and allowed the application of the defendant-respondent i.e. Paper No. 192 Ga. Thus, the application of the plaintiffs for amendment was rejected.

7. Being dissatisfied with the order of the trial Court, the plaintiffs-appellants

preferred an appeal, being Civil Appeal No. 96 of 2012, Central Council Radhasoami Satsang and others v. Dr. D.K. Hazara, before the learned District Judge, Agra. It appears that during the pendency of the appeal the plaintiffs-appellants moved an application under Order I Rule 8 CPC stating therein that Sri Nirmal B. Thakker and Sri S.S. Bhattacharya, the President and Secretary of the Central Council respectively, be permitted to contest the appeal as a representative of all the members of the Council. The lower appellate Court vide its order dated 23rd October, 2015 rejected the said application as being not maintainable.

8. By the impugned judgment and order dated 09th November, 2016 the lower appellate Court dismissed the appeal of the appellants-plaintiffs with the finding that since the Central Council or Central Administrative Council is not a registered body, the suit can be brought only by the entire body of the members and in the event of death of any of the members, the provision of Order 22, Rule 10 CPC will have no application, hence the substitution or the impleadment will be governed by Order 22, Rule 3 CPC and its consequences. Against the aforesaid judgment, the present second appeal has been filed.

9. Sri Ravi Kant, learned Senior Advocate, assisted by Sri Tarun Agrawal, learned counsel for the caveator-respondent, has raised a preliminary objection that this second appeal is not maintainable as the impugned order passed by the subordinate court is not a decree as per the provision of Section 2(2) CPC as there was no determination of rights of the parties within the meaning of Section 2(2) CPC, therefore, the impugned order is not appealable under Section 100 CPC. Next he submits that only remedy available to the appellants-plaintiffs would be to file a revision under Section 115 CPC. He has placed reliance on the judgments of the Supreme Court in the cases of Madan Naik (Dead) by L.Rs. and others v. Mst. Hansubala Devi and others (1983) 3 SCC 15, Ratansingh v. Vijaysingh and others (2001) 1 SCC 469, and Mangluram Dewangan v. Surendra Singh and others (2011) 12 SCC 773.

10. Sri Navin Sinha, learned Senior Advocate, assisted by Sri Devansh Rathore, learned counsel for the appellants, submitted that the view taken by the lower appellate Court is erroneous and the Courts below have failed to consider that newly elected members against the vacancy created on account of death of existing members would be termed as legal representative. He further submitted that in the event of failure to bring on record the newly elected members in place of deceased members within time, the proceeding would not abate and the provision of Order 22, Rule 3 CPC will not be attracted and the suit can continue with the existing members.

11. I have heard learned counsel for the parties and perused the record.

12. The plaintiffs-appellants instituted the aforesaid suit for eviction against the defendant-respondent. In the said suit, the Central Council Radhasoami Satsang is plaintiff no. 1. Its President, other office-bearers and 16 members of the

Council had joined the said suit as plaintiffs.

13. Concededly, during the pendency of the said suit as many as 12 plaintiffs died, which is evident from the application moved by the plaintiffs-appellants under Order 6, Rule 17 CPC, thereby reducing the number of the members of the Council less than 10. It is also not disputed that after their death the new members, who were sought to be enrolled, were not impleaded in the suit on the legal advice that it was not necessary. Hence, as noticed above, the total number of the plaintiffs came down to 5.

14. The first question which arises for determination in this appeal is whether the second appeal is maintainable against the orders passed by the learned Courts below. Secondly, whether the order passed by the trial Court to abate the suit is decree or not ?

Section 100 CPC enjoins that a second appeal shall lie against a judgment and decree of the subordinate Court. For the sake of convenience, Section 100 CPC is reproduced below :

"100. Second appeal.-(1) Save as otherwise expressly provided in the body of this Code or by any other law for the time being in force, an appeal shall lie to the High Court from every decree passed in appeal by any Court subordinate to the High Court, if the High Court is satisfied that the case involves a substantial question of law.

(2) An appeal may lie under this section from an appellate decree passed ex-parte.

(3) In an appeal under this section, the memorandum of appeal shall precisely state the substantial question of law involved in the appeal.

(4) Where the High Court is satisfied that a substantial question of law is involved in any case, it shall formulate that question.

(5) The appeal shall be heard on the question so formulated and the respondent shall, at the hearing of the appeal, be allowed to argue that the case does not involve such question:

Provided that nothing in this sub-section shall be deemed to take away or abridge the power of the Court to hear, for reasons to be recorded, the appeal on any other substantial question of law, not formulated by it, if it is satisfied that the case involve such question."

15. The expression "decree" has been defined under Section 2(2) CPC in the following terms :

"2(2) "decree" means the formal expression of an adjudication which, so far as regards the Court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit and may be either preliminary or final. It shall be deemed to include the rejection of a plaint

and the determination of any question within section 144, but shall not include-

- (a) any adjudication from which an appeal lies as an appeal from an order, or
- (b) any order of dismissal for default.

Explanation.-A decree is preliminary when further proceedings have to be taken before the suit can be completely disposed of. It is final when such adjudication completely disposes of the suit. It may be partly preliminary and partly final;"

16. In the present case, the application of the defendant-respondent for abatement of the suit under Order 22, Rule 3 CPC has been allowed by the trial Court. The Courts below have taken the view that in the facts of this case the provision of Order 22, Rule 3 CPC shall be attracted. The lower appellate Court has found that the plaintiff no. 1 is an unregistered organisation and unless all its members are party in the suit as plaintiffs, the plaintiff no. 1 cannot institute the suit in its name and in this regard it has relied on a judgment of this Court in Bhagwandas Singh and others v. Pinjra Pole Pashu Anathalaya AIR 1927 Allahabad 789. It has also relied on a judgment of the Nagpur High Court in The G.I.P. Railway Senior Institute, Ajni, Nagpur and another v. Mohit Kumar Barat AIR 1954 Nagpur 29, wherein it was held that an unregistered and non-proprietary club is not a judicial person and as such cannot sue or be sued. Where it has to be made liable, the proper course is to sue individually the members thereof or to sue only those persons who have rendered themselves personally liable in respect of the contract or tort as the case may be.

17. The provision of Order 22, Rule 3 CPC reads as under:

"3. Procedure in case of death of one of several plaintiffs or of sole plaintiff.-(1) Where one of two or more plaintiffs dies and the right to sue does not survive to the surviving plaintiff or plaintiffs alone, or a sole plaintiff or sole surviving plaintiff dies and the right to sue survives, the Court, on an application made in that behalf, shall cause the legal representative of the deceased plaintiff to be made a party and shall proceed with the suit.

(2) Where within the time limited by law no application is made under sub-rule (1) the suit shall abate so far as the deceased plaintiff is concerned, and, on the application of the defendant, the Court may award to him the costs which he may have incurred in defending the suit, to be recovered from the estate of the deceased plaintiff."

18. The said issue came to be considered by the Supreme Court and various High Courts. The Supreme Court in Mangluram Dewangan (supra) considering the definition of decree under Section 2(2) CPC held that no appeal lies against an order passed under Order 22, Rule 3 and 5 of the Code. Paragraph-25 of the judgment is quoted below:

"25. If the court orders that suit has abated or dismisses the suit as having abated, as a consequence of rejection of an application under Order 22, Rule 3 of

the Code, as noticed above, there is no determination of rights of parties with regard to any of the matters in controversy in the suit and therefore the order is not a decree. But if an order declares that the suit has abated, or dismisses a suit not as a consequence of legal representatives filing any application to come on record, but in view of a finding that right to sue does not survive on the death of sole plaintiff, there is an adjudication determining the rights of parties in regard to all or any of the matters in controversy in the suit, and such order will be a decree. But that is not the case here."

19. In *Mangluram Dewangan* (supra) the Supreme Court has cited with approval two Full Bench decisions of the High Courts, one of the Lahore High Court in the case of *Niranjan Nath v. Afzal Hussain* AIR 1916 Lah 245, and another of the Madhya Pradesh High Court in the case of *Mitthulal v. Badri Prasad* AIR 1981 MP 1. Paragraphs-27 and 28 of the judgment read as under :

"27. A full Bench decision of the Lahore High Court in *Niranjan Nath v. Afzal Hussain* AIR 1916 Lah 245 held as follows : (AIR pp. 246-47)

"... After examining the matter carefully we consider that if a court passes a purely formal order recognising the abatement, which is a *fait accompli*, such an order, though virtually disposing of the suit, does not adjudicate upon any rights, and cannot be treated as a decree. An order of this nature, as observed already, merely records an abatement, which has already taken place by reason of the lapse of six months (What is referred to as "six months" is three months, under Article 120 of the Limitation Act, 1963) after the death of the plaintiff, and does not contain any decision arrived at by the Court. In a case of this kind Order 22, Rule 9 allows the legal representative to make an application for the revival of the suit, and the only question the Court is thereupon required to determine is whether the applicant was prevented by any sufficient cause from continuing his suit, and if the decision is in the negative, the aggrieved party is entitled to prefer an appeal against that order under Order 43, Rule 1 (k). The decision of the appellate court is, however, made final, and a second appeal is not competent.

The language of Order 22, Rule 9 (2), when carefully examined, leads us to the conclusion that it is confined to cases in which the abatement takes place by reason of an application not having been made within the time permitted by law to implead the legal representative of the deceased plaintiff or the deceased defendant, and that it has no applicability to cases in which the suit has abated on account of some other cause. This view receives support from the decision of the Madras High Court in *K.R. Subramania Iyer v. Venkataramier* AIR 1916 Mad 1068 : (1915) 31 IC 4. Suppose, the sole plaintiff in a suit dies, and in spite of an application within six months by his legal representative the court holds that the right to sue does not survive, and consequently directs the abatement of the suit. An abatement of this character obviously stands on a different footing. It does not take place *ipso facto*. The court does not record a merely formal order reciting a past even, as in the case of an abatement in consequence of an

application not having been made within the prescribed period to implead the legal representative, but it exercises its mind in the determination of a matter in controversy. The decision of the court directing the abatement of the suit is, in our opinion, a decree, because the right to represent the deceased is a point in controversy between the claimant and the opposite party, and the adjudicator determines their rights with respect thereto, and puts an end to the case, there being no appeal from the adjudication as an appeal from an order. An application under Rule 9 is, as observed above, incompetent and it is difficult to believe that the legislature intended that the decision of a matter, which concludes the suit, should be final and that the aggrieved party should have no remedy whatever.

(emphasis supplied)

28. In *Mitthulal v. Badri Prasad* AIR 1981 MP 1, a Full Bench of the Madhya Pradesh High Court held as follows : (AIR p. 4, para 5)

"5. There seems to be a general consensus of judicial opinion that all orders of abatement are not decrees. Only those orders of abatement are decrees in which the Court comes to the conclusion that the right to sue does not survive on the death of the sole plaintiff or on the death of one of the plaintiffs to the surviving plaintiffs. The orders of abatement which follow consequent on the failure of the legal representative of the plaintiff to be brought on record within the period allowed by law or due to the court deciding that a particular applicant is not the legal representative, such orders do not amount to decree. The reason being that the abatement is automatic consequent on the failure of the legal representative to be brought on record within the period of limitation and no formal order is necessary. So there is no adjudication on the rights of the parties in the suit or appeal by such an order. An order under Order 22, Rule 5 cannot obviously be said to fall within the definition of decree for the following reasons: (i) the order is made only for the purpose of determining who should continue the suit as brought by the original plaintiff. It is not intended to determine and it does not, in fact, determine the rights of the parties with regard to any of the matters in controversy in suit. The question that arises for decision and actually decided is not one arising in the suit itself but is one that arises in a collateral proceeding and has to be got decided before the suit can go on; and (ii) in order to operate as a decree, the adjudication must be one between the parties to the original suit or their legal representatives, and with regard to only matters in controversy between the original parties and, therefore, cannot include a decision of the question as to whether certain individual is or is not entitled to represent one of such parties. In cases where the Court comes to the conclusion that the right to sue does not survive consequent on the death of the sole plaintiff or one of the plaintiffs to the surviving plaintiffs, there is final adjudication of the rights of the parties and the order amounts to decree."

(emphasis supplied)"

20. In *Ratansingh* (supra) the Supreme Court has held that "decree" means a

formal expression of an adjudication and the Court must conclusively determine the rights of the parties with regard to all or any of the matters in controversy in the suit. Therefore, rejection of an application for condonation of delay was held to be not amounting to a decree and the appeal, which was dismissed as time barred, is also not a decree. In paragraph-11 of the judgment the Supreme Court held as under :

"11. In order that decision of a court should become a decree there must be an adjudication in a suit and such adjudication must have determined the rights of the parties with regard to all or any of the matters in controversy in the suit and such determination must be of a conclusive nature. If those parameters are to be applied then rejection of application for condonation of delay will not amount to a decree. Consequently, dismissal of an appeal as time-barred is also not a decree. We are aware that some decisions of the High Courts have taken the view that even rejecting an appeal on the ground that it was presented out of time is a decree within the meaning of the said definition. We are also aware of the contrary decisions rendered by High Courts on the same point. Dealing with some of those decisions a Full Bench of the Calcutta High Court [S.P. Mitra, CJ, Sabyasachi Mukherjee, J. (as he then was) and S.K. Datta, J] has held in *Mamuda Khateen v. Beniyan Bibi* AIR 1976 Cal. 415 that "if the application under Section 5 of the Limitation Act was rejected the resultant order cannot be decree and the order rejecting the memorandum of appeal is merely an incidental order". The reasoning of the Full Bench was that when an appeal is barred by limitation the appeal cannot be admitted at all until the application under section 5 of the Limitation Act is allowed and until then the appeal petition, even if filed, will remain in limbo. If the application is dismissed the appeal petition becomes otiose. The order rejecting the memorandum of appeal in such circumstances is merely an incidental order. We have no doubt that the decisions rendered by the High Courts holding the contrary view do not lay down the correct principle of law."

21. The Supreme Court in *Madan Naik* (supra) considered the abatement of the suit and held that the abatement of an appeal does not involve adjudication on the merit and therefore, when an appeal abated, there was no decree. Paragraph-8 of the judgment reads thus :

"8. Section 2, sub-section (2) of the Code of Civil Procedure defines "decree" to mean "the formal expression of an adjudication which, so far as regards the Court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit and may be either preliminary or final. It shall be deemed to include the rejection of a plaint and the determination of any question within Section 144 but shall not include any adjudication from which an appeal lies as an appeal from an order". When an appeal abates for want of substitution as envisaged by sub-rule (1) of Rule 9 Order 22, it precludes a fresh suit being brought on the same cause of action. It is a specific provision. If abatement implied adjudication on merits, Section 11 of

CPC would be attracted. Abatement of an appeal does not imply adjudication on merits and hence a specific provision had to be made in Order 22, Rule 9 (1) that no fresh suit could be brought on the same cause of action. Therefore when the appeal abated there was no decree, disposing of the first appeal, only course open is to move the court for setting aside abatement. An order under Order 22, Rule 9 (2), CPC refusing to set aside abatement is specifically appealable under Order 43, Rule 1 (k). Such an adjudication if it can be so styled would not be a decree as defined in Section 2(2), CPC. Section 100 provides for second appeal to the High Court from every decree passed in appeal by any Court subordinate to the High Court on the grounds therein set out. What is worthy of notice is that a second appeal lies against a decree passed in appeal. An order under Order 22, Rule 9 appealable as an order would not be a decree and therefore, no second appeal would lie against that order. Such an appeal is liable to be rejected as incompetent."

22. What emerges from the aforesaid judgments is that the order of abatement is not a decree in terms of Section 2(2) CPC as there is no adjudication of rights of the parties on merit, hence it cannot be said to be a decree.

23. After careful consideration of the submissions made by the learned counsel for the parties, the material on the record and the law discussed above, I am of the view that the preliminary objection raised by Sri Ravi Kant, learned Senior Counsel appearing for the respondent, merits acceptance. Hence, the second appeal is dismissed as not maintainable.

24. No order as to costs.